IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3201 OF 1999

Dattatraya Pralhad Gaikwad
Resident of Wadal,
Taluka North Solapur,
District Solapur ...Petitioner

Versus

1. The Colonel Commanding
   Officer, First Dalallish,
   The Mahar Regiment,
   ABOHOR,
   State of Rajasthan.

2. The LT ADJT.
   The Mahar Regiment,
   ABOHAR,
   State of Rajasthan.

3. The Union of India ...Respondents.

.....

Shri. A.R. Baxi, counsel for the Petitioner

Shri. D.A. Dube, counsel for Respondent.

.....

CORAM: DR. S. RADHAKRISHNAN AND
SMT. V.K. TAHILRAMANI, JJ.

DATED: 15TH DECEMBER, 2005

ORAL JUDGMENT (PER SMT. TAHILRAMANI, J.):-

1. Heard the learned counsel for the Petitioner and the learned counsel for Respondent Nos. 1 and 2.

2. The Petitioner joined the services in Army in the year 1976 as a "Shipoy". Thereafter, the Petitioner came to be promoted from time to time. In 1998 he was holding the post of Subhedar. In the year 1998, admittedly, the Petitioner was entitled to 60 days leave in a year. The Petitioner applied for 30 days leave for the year 1998. Leave came to be granted to the Petitioner from 8th June, 1998 to 7th July, 1998. The Petitioner applied for further extension of leave. On the request of the Petitioner, leave was extended by 10 days i.e. upto 17.7.1998. In view of this, the Petitioner had to report back on 17.7.1998. However, the Petitioner did not report back on 17.7.1998 and in fact the Petitioner reported back on 19.7.1998. Thus, according to the Respondents, the Petitioner overstayed his leave by two days. On account of this after following necessary procedure, the Petitioner came to be punished.

3. The punishment awarded to the Petitioner was that he was reverted to the post of Naib Subhedar. Thus, major punishment came to be awarded to the Petitioner for over stay for a period of two days whereby the Petitioner was reverted to the post of Naib Subhedar as according to the Respondents, the Petitioner

failed to rejoin the unit on expiry of his leave period without sufficient cause.

4. It is the case of the Respondents that the Petitioner with deliberate intention to avoid his duty, remained absent for two days. It is seen that the Petitioner has rejoined his duty of his own accord, *albeit* two days late. During the period that the Petitioner was on leave his wife was seriously ill and there were nobody to look after her as the children of the Petitioner were minors. In view of this, the Petitioner had to get his leave extended. The extension of leave was granted for the period of 10 days. In view of extension of leave, the Petitioner had to resume on duty on 17.7.1998. With a view to resume his duty on 17.7.1998, the Petitioner left his home on 15.7.1998. So as to catch the morning train the Petitioner travelled in a jeep to the Railway station. However, the jeep in which the Petitioner was travelling, met with an accident, hence, the jeep could not proceed further to the Railway station. On account of this, the Petitioner caught a bus to reach the Railway Station in time. However, the Petitioner missed the train. Therefore,the Petitioner returned home. On reaching

home, the Petitioner found that the condition of his wife was more serious, hence, the Petitioner took her to the nearest doctor and got her treated. Due to these events, the Petitioner was not able to catch the morning train and instead he caught the evening train and joined the unit on 19.7.1998 instead of 17.7.1998. The petitioner gave joining report on the same date i.e. on 19.7.1998.

5. The Petitioner has also annexed a certificate of the Doctor in respect of illness of his wife from 15.7.1998 to 16.7.1998. The Respondents have not disputed the genuineness of this certificate. So also the Respondents have not stated that the reason given by the Petitioner for reporting late by two days is a false one. Except this incident, the record of the Petitioner is good. We do not find that there was any deliberate intention on the part of the Petitioner to avoid his duties.

6. Looking to the medical certificate the reason given by the Petitioner appears to be genuine. It cannot be said that the Petitioner failed to rejoin the unit without sufficient cause. In the facts and circumstances of this case, we find that there was

sufficient cause for the Petitioner for joining his duty two days late. Even, otherwise, in our view, looking to the facts of this case, it cannot be said that the conduct of the Petitioner was such that it justifies such a harsh punishment. In this view of the matter, the order dated 08.08.1998 whereby the Petitioner came to be reverted from the post of Subhedar to the post of Naib Subhedar, deserves to be set aside and is accordingly set aside. The petitioner is no longer in service. However, as the order of reversion is set aside, the petitioner be granted all consequential benefits. The same be done by 31.03.2006. Rule made absolute. No order as to costs.

*****